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[December 18, 2015]

Ms. Sarah Rees
Special Assistant Climate Policy

Mr. Stuart Clark
Air Quality Program Manager

Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Union of Concerned Scientists' Comments on Clean Air Rule

Dear Ms. Rees and Mr. Clark:

Earlier this month, global leaders from more than 190 nations heeded the science and adopted a landmark agreement to limit global average temperature increases to "well below 2 degrees Celsius" from pre-industrial levels (and to pursue efforts to limit the temperature increase to 1.5°C) and achieve net-zero global warming emissions in the second half of this century. National and sub-national action to reduce carbon pollution will be critical to achieving these goals and limiting the worst impacts of climate change. The Union of Concerned Scientists (UCS) believes that emission reduction efforts in Washington should reflect a similar level of ambition. We are therefore pleased to have the opportunity to provide our initial feedback on the draft design concepts for the Washington State Department of Ecology's (Ecology) Clean Air Rule (or Rule) to limit greenhouse gas emissions in the state.

Our nearly 15,000 supporters in Washington also support strong action by Governor Inslee to reduce heat-trapping emissions. Many of them are already feeling the effects of climate change today, including record-breaking wildfires ravaging their communities and forests, increasingly acidic oceans damaging valuable shellfish hatcheries, and decreasing snowpack and earlier snowmelt threatening summer water supplies. Global warming presents a severe challenge to Washington's way of life — but is one that can be addressed through swift and meaningful action to reduce global warming pollution.

UCS commends Governor Inslee for his continued climate leadership in directing Ecology to develop this regulation. The Rule offers an important opportunity to help shape Washington's transition to a low-carbon economy and secure the deep reductions necessary to reduce the risks of climate change and protect the public's health. It is therefore imperative that it achieve actual reductions and provide a solid foundation for future climate and clean energy policy action.

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Our comments on the draft design concepts focus on a subset of issues that affect the integrity of the rule and the robustness of the system it creates. We look forward to providing more detailed comments on the draft regulatory language once it is released.

1. **The Rule must ensure actual emission reductions using proven criteria and avoid double counting.**

UCS strongly believes that the Rule must ensure actual emission reductions that use proven criteria and avoid double counting. We support some flexibility in the design of the Rule but caution Ecology against doing so at the expense of actual emission reductions. Any emission reduction must meet five criteria— it must be real, permanent, enforceable, verifiable, and additional— or Ecology risks undermining the integrity of the Rule and setting harmful policy precedents. While we agree with Ecology's approach of using these criteria to evaluate emission reductions, we have some concerns about their proposed application.

- **Ensuring real reductions:** Ecology's proposal includes a breadth of potential project types that could qualify for emission reduction credits, including "projects, programs, or emission reduction activities" which we understand from the webinar refers to actions taken by entities not covered under this rule nor subject to the state's Greenhouse Gas Reporting rule. In order to be "real," the Rule requires that they be specific, identifiable, and quantifiable reductions. UCS recommends that Ecology initially limit emission reduction credits to sources for which rigorous emission quantification protocols already exist and have been demonstrated to result in real emissions reductions, and establish a timeline to develop additional robust protocols for future use. There are models in other states and countries that Ecology could adapt to the needs of Washington as a start. This practice will also help reduce the administrative burden of approving emission reduction credits on a project by project basis.

- **Avoid double counting:** Ecology should implement a clear and transparent tracking system for emission reductions and credits to ensure that they are not counted towards compliance by two different covered facilities or by other carbon reduction programs (see our comments below on additionality and setting the declining cap). Ecology's proposal to use an entity's compliance report as a 'ledger' is a helpful first step, but the Rule should include detailed language laying out how these ledgers will function together as a more comprehensive system to track the creation and use of credits. Ecology should also develop very clear guidance in the regulatory language or in a separate document outlining which entity can claim credit for an emission reduction, and engage in similar conversations with external carbon markets whose compliance instruments are considered as credits under the Rule. Specifically, Ecology should ensure that its Rule does not undermine the emissions reduction goals of other carbon reduction programs to which it may link.

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- **Clarify criteria for additionality:** Ecology defines additional as: "above and beyond requirements" and "not otherwise required by law or regulation, with exceptions: Federal Clean Power Plan ("111d") (and) certain other broad sector-wide policies", "not business-as-usual" which means it "would not have occurred but for this program" and is "defined on a project or protocol basis, as appropriate for this program". UCS recommends that Ecology provide more detail on exactly how "certain other broad sector-wide policies" will interact with the Rule. Moreover, Ecology should provide more clarity on what it considers to be business-as-usual (BAU) and what the BAU emissions trajectory will look like. In order to design an effective system, it is critical that the declining cap be set at a stringent enough level so that the Rule goes beyond BAU.

We specifically ask Ecology to pay careful attention to the potential overlap of this Rule with the Federal Clean Power Plan, and to ensure that both work in a complementary fashion.

2. **Ecology should consider the statutory carbon reduction goals for 2035 and 2050 as emission reduction floors when designing the declining emission caps and establish a plan to regularly review the levels of future caps.**

Gov. Inslee directed Ecology to ensure that the Rule results in substantive emission reductions. As mentioned above, UCS believes the emission reduction goals should be on par in their ambition with the principles of the newly adopted United Nations agreement that was signed in Paris. The draft design concepts are guided by Washington's statutory goals of reducing carbon emissions to 25 percent below 1990 levels by 2035 and 50 percent below 1990 levels by 2050. Particularly in light of the recent Paris agreement, we believe these goals should serve as an emission reduction floor —rather than ceiling— to guide the development of the declining emission caps.

Ecology should review the effectiveness of the established caps every 3 to 5 years and the Rule should include the flexibility to adjust the caps as appropriate to ensure the reductions are aligned with the state, national and international objectives for emission reductions and clean technology opportunities. Several carbon markets have updated caps set in the early years to more accurately account for the introduction of low cost emission reduction options and changing market conditions. Regular review of the caps at scheduled times will help to ensure that Washington's emission caps continue to drive improvements over BAU while providing businesses with the expectation to plan for future changes to the caps.

3. **The Rule should ensure that compliance through credits does not discourage technological innovation or harm the public's health.**

The current draft design concepts allow entities to meet their cap entirely through the use of credits, which can be generated by "reducing emissions below (the) cap", "reporters voluntarily participating in

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(the) program", "projects, programs or emission reductions activities", and "instruments from external carbon markets (e.g., allowances)". It is our understanding that the use of the latter three types of credits to meet a cap would not represent trading of credits among covered entities. UCS recommends that Ecology not allow covered entities to meet their emissions caps entirely through these three types of credits ("projects, programs, or emissions reduction activities", "reporters voluntarily participating in the program", and "instruments from external carbon markets") and include requirements that will incentivize technological innovation for on-site emission reductions. This approach will encourage each covered sector to contribute directly to emission reductions and move onto a lower carbon trajectory rather than relying solely on reductions from other sectors and continuing to engage in carbon-intensive investments and practices. This requirement will also send an important market signal to industry in support of Washington's low carbon transformation.

In addition, Ecology should consider the impacts of its draft design concepts on local air quality across Washington, particularly in communities that are already adversely impacted by air pollution. Depending on how an entity chooses to meet the cap, its use of credits might result in increased emissions of harmful air and water co-pollutants. To avoid this outcome, we recommend that the Rule require monitoring its impact on local air quality, particularly around existing pollution hot spots, to ensure that it does not create or exacerbate pollution hot spots and result in back-sliding on air and water quality.

UCS appreciates this opportunity to provide input into Ecology's development of the Rule, and we look forward to commenting on the details of the Rule when they are available. UCS strongly supports Washington's transition to a low-carbon economy and this Rule provides an important opportunity to help realize the emission reductions necessary to avoid the worst climate risks and protect the public's health. We therefore strongly encourage Ecology to develop draft regulatory language that reflects our recommendations to ensure actual emission reductions and a robust system overall that we could support. We also urge Ecology to continue a robust, inclusive stakeholder process as the Rule is developed and finalized.

Sincerely,

Jamesine Rogers Gibson
Western States Senior Climate Analyst
Union of Concerned Scientists